
JUDICIAL ERRORS IN LUNACY.

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The scope of this paper is limited to cases which came under the jurisdiction of criminal courts and refers only to lunatics who have been convicted and sentenced.

The lunatics who thus suffer punishment from the criminal courts may be divided into two classes.

A.

In the first class we meet with those who, though having been submitted to medical examinations and found insane, have, nevertheless, been convicted and sentenced, because the court paid no heed to the opinion of the experts who testified to their irresponsibility. These are judicial errors which may be called intentional.

These errors have been brought up at a meeting of the British Medical Association in 1895, by eminent experts, as to England, as shown by the following extracts from the proceedings:—

Dr. Clouston: "He thought that half of all criminals solemnly tried and condemned to be hanged, were afterwards made out insane and relegated to Broadmoor."

Dr. Nicholson: "The actual percentage of those committed for murder, being reprieved was 5.6 per cent., for a period extending over 30 years."

Dr. Maudsley: "Injustice was undoubtedly done by a parade of justice, condemnation and afterwards removal to Broadmoor."

Dr. Daniel Clarke, of Toronto, gave before this Association, facts collected in Canada, which we would call very interesting if they were not so to be regretted.

Speaking at the last meeting of this Association, Dr. H. E. Allison, of the Matteawan State Hospital for criminal lunatics, said: "It will be noticed that out of one hundred and seventy-nine insane persons who have committed murder, over fifty-three per cent. were received

* Read at the fifty-fifth annual meeting of the American Medico-Psychological Association, held in New York, May, 1899.

from the prisons, having been convicted and sentenced for life. So far as it is possible to judge from their histories, and from the character of their disease, at least forty per cent. of such convicted cases were insane at the time the crime was committed. In many instances the fact of their insanity was not recognised at the time of their trial, but in others the plea was set upon a defence and failed."

B.

The second class comprises all those insane persons whose mental derangement has not been recognised at the trial and have been sentenced, the fact of their insanity having passed unnoticed. No medical opinion was sought for and no plea of insanity was set as a defence.

These are judicial errors which may be called unintentional. To this second class of cases we shall refer exclusively in this paper.

For some years past doctors and criminologists have been struck by the number of unrecognised insane, condemned by the courts, and very interesting statistics on the subject have been published in Europe.

1.

In an essay, published in 1891, Dr. Pactet gives more than 35 observations gathered in the space of a few months, whilst he was house physician at the special infirmary of the Prefecture of Police at Paris.

In 1892, Dr. Paul Garnier, chief physician of the infirmary of the Paris Prefecture of Police, in his report, presented to the Anthropological Congress at Brussels, compiled a statistical table of unrecognised insane, who were condemned and afterwards sent from the various prisons of the Department of the Seine to the special infirmary, in order to undergo an examination as to their sanity.

These lunatics were numbered as follows:—

1886.....	59
1887.....	45
1888.....	49
1889.....	37
1890.....	65
	<hr/>
	255

This table shows a total of 255 errors for a period of five years.

Dr. Eugene Thibaud, in a remarkable paper published in 1896, gives an account of the number of lunatics judicially condemned and afterwards committed to the Ann's Asylum (Paris), in the service of Dr. Magnan, from 1891 to January 1st, 1896, to be as follows:—

1891	22
1892	17
1893.....	21
1894.....	15
1895.....	42
	<hr/>
	117

which gives a total of 117 judicial errors for this quinquennial term.

Dr. Henry Lemesle, in an essay published in 1896, gives quite a number of personal observations, collected during the year, of unrecognized lunatics who were condemned and afterwards reached the asylum.

In 1894, at the Congress of Mental Science, held at Clermont Ferrand, Dr. Henry Monod, director of Charities and Public Health of the Department of the Interior, gave the results of an investigation made in France of the lunatics admitted from 1886 to 1890 inclusively, in a certain number of asylums. He proves that of the 30,000 lunatics committed to those establishments, 271 had undergone punishment that medical examination would have prevented.

Almost similar statistics are found in Germany. At the Waldheim prison, of 6,276 prisoners condemned, 2.7 per cent. were lunatics. Dr. Kühn has stated that under like circumstances 144 lunatics were condemned for different crimes.

In Scotland, the Inspector of Prisons, Mr. Frederic Hall, and Professor Leacock found similar results (Lemesle).

We may also refer to the opinion of Dr. Allison reported above for the State of New York.

In the Province of Quebec, we are no better situated, as is shown by the following table compiled from the reports of the Inspectors of Prisons and Asylums.

Year.	No. of prisoners.	Received insane during the year.	Became insane during the year.	Transferred to asylum during the year.	Insane remaining in jail at the end of year.	Insane committed for protection during the year.
1881.....	3,603	176	14	?	25	145
1882.....	3,159	123	?	?	16	26
1883.....	3,250	147	?	?	11	40
1884.....	3,565	133	?	?	5	39
1885.....	3,368	39	5	33	3	16
1886.....	3,415	52	19	24	4	27
1887.....	3,483	94	8	49	3	11
1888.....	3,999	56	14	53	1	30
1889.....	3,960	48	13	52	0	27
1890.....	4,280	39	20	56	1	22
1891.....	4,177	45	18	53	0	8
1892.....	3,478	31	0	38	0	18
1893.....	3,628	37	24	43	0	22
1894.....	4,525	50	13	44	7	14
1895.....	4,652	44	6	45	5	20
1896.....	4,760	31	1	47	4	21
1897.....	4,037	49	0	43	5	12
	65,699	1,197	155	580	90	498

From 1881 to 1897 inclusively, 1,197 lunatics were admitted to the common jails of the Province, of this number only 498 were incarcerated for safe keeping whilst waiting for the proper papers to be made out for their removal to the asylum. Deducting the 498 cases, who were intentionally committed as lunatics, their mental condition

being known, there remains a total number of 699 lunatics condemned, during a period of 17 years, that is to say, an annual average of 40 unrecognised and condemned lunatics.

The proof that these prisoners were lunatics at the time of their trial and sentence is that upon their reception in prison they were immediately classed as lunatics. In the reports, it is stated that they were received as insane, to distinguish them from prisoners who became insane whilst undergoing their sentence. Moreover, the most part of them were transferred to the asylum a very short time after their trial, or, at least, during the year of their conviction, as the tables cited above prove. They show, indeed, that there remained in prison at the end of the year only a very limited number of lunatics and that even in certain years all had been transferred to the asylum. But this number of 699 lunatics received in the prisons after their trial and conviction does not certainly give the exact total of unrecognised and condemned lunatics. For 155 prisoners are reported as having become insane during the time of the detention. There is here certainly an error of interpretation. They are evidently, for the greater part, individuals whose insanity, after having been unrecognised at the time of their trial, was not detected at the time of their committal, and only became known during the time of their detention, on the occasion of some boisterous actions.

To one of us is assigned the duty of examining the prisoners confined in Montreal jail who are thought to be insane. This prison alone receives almost half, and very often more than half of all the individuals condemned in the Province of Quebec. Since 1894 not a single case was met whose insanity did not ante-date the trial and committal.

Moreover, a certain number of condemned lunatics do not appear at all in the above statistics, their mental state having been overlooked not only at the trial, but also during the whole time of their detention. This occurs in cases where the symptoms, though indisputable, are not sufficiently obvious to be apparent to observers without any special knowledge of insanity. When these cases accommodate themselves to prison life and are not difficult to manage, they frequently do not come under notice as lunatics. Also in cases where the prisoner conceals his insane delusions, etc., as Marandon de Montyel has reported numerous cases, and pass consequently unnoticed. These cases are not entered as lunatics in the records.

It is of no special interest to relate the history of these patients, who belong to all classes of insane. They are remarkable only from the fact that they have been unrecognised by the courts and condemned, and have been transferred to an asylum almost immediately after their condemnation, or after having undergone some part of their sentence.

Some of these cases have been noted by one of us in an essay upon the legal responsibility of the insane in Canada.

However, one case appears to me worthy of relating on account of the wording of the judge's sentence. A young woman suffering from mystic delusions had been temporarily removed from an asylum, where she was being treated, by her family, who wished to take charge of her a time. Two weeks after leaving the asylum she escaped from her home and her flight was made known to the police, who were asked to look for her. The following night a constable met the young woman, who was wandering around the streets, and arrested her. At the police station she clearly showed her insanity by saying that "she was the daughter of God." Brought before the magistrate, he sent her to prison, wording his sentence as follows: "Whereas a young woman of unknown name, but who calls herself the daughter of God, has been found by this court to be a vagrant, a libertine, and a night-walker, etc."

One of us saw her a few days after she had been condemned, and, on his report, she was sent back to the asylum, from which she had only been allowed to leave on trial.

II.

The other cases that came under our notice have a much more lamentable aspect, for they refer to lunatics who have not only been condemned, after having been unrecognised as such by the courts, but who have been so repeatedly, or who have undergone the hard punishment of the penitentiary for several years, imprisoned among convicts, and subjected to the same regime. Some even of them, after having been found sufficiently sane to be condemned and undergo their punishment, were not judged wise enough to be able to take care of themselves, and were transferred to the asylum on the expiration of their sentence, in place of being given their liberty.

We will lay before you a few examples and make a few remarks on the most striking cases.

In the month of November, 1896, whilst making a visit to one of the penitentiaries we were asked to examine certain convicts. A few days afterwards one of us, sending the results of our examination to the Warden of the penitentiary, wrote as follows:—

Case 1. T. P. shows fixed delusions of persecution, marked by false ideas of persecution, illusions and hallucinations of hearing. This individual is a patient who cannot be suitably treated in a penitentiary. Moreover, the nature of his disease is such that violent reactions follow, which are of such a nature as to be sufficient to compromise the security of the guardians and convicts and disturb order and discipline. On account of his being considered irresponsible, the ordinary measures of restraint usually employed in the peniten-

tiaries cannot be used with him. For all these reasons this unfortunate should be transferred to a lunatic asylum.

Case No. 2. C. L. is almost an imbecile, or, at best, weak-minded in a very marked degree, the inconsistency of his language betrays the want of co-ordination in his ideas, and the weakness of his intelligence. In his case this state is permanent, and it existed at the time he committed his crime, during his trial and when he was sentenced.

In consequence of the weakness of his intellect, this person should not be held accountable for his actions. And as he consequently cannot take care of himself, and as it is dangerous, not only for himself, but also for others, that he should be at large, he should be confined in a lunatic asylum until he can be liberated on condition that a proper watch is kept on him to prevent a repetition of the same acts.

Case No. 3. A. P. The same remarks applied to this patient. He is of weak mind, irresponsible, and incapable of taking care of himself. He should be confined in an asylum. His malady is due to an arrest of his intellectual development.

Case No. 4. T. C. is an imbecile. His intelligence shows much to be wanting. He is irresponsible and not able to take care of himself.

Case No. 5. H. L. shows mental enfeeblement in a marked degree. In his case it is either congenital or terminal. He, moreover, shows delusions (false ideas of persecution) and sensorial troubles (hallucinations of hearing and of general sensibility). These delusions and hallucinations were pre-existent to his crime, and certainly existed at the time of his trial; he then also showed the same intellectual weakness. This patient should be transferred to and kept in an asylum, until all the delusions which now trouble him have disappeared, or given his liberty when sufficient guarantee is given that he will be well watched, so that he will be prevented from repeating his former crimes.

Case No. 6. F. D. is weak-minded, and has delirious ideas and hallucinations of hearing. This weak-mindedness is probably due to an arrest of intellectual development. This is a permanent and definite state, existing previous to his crime and trial. This person should be transferred to a lunatic asylum. He should not be given his liberty unless the assurance was also given that he would be well watched and prevented from doing harm.

As can be seen, all the patients whom I have mentioned, with the exception of T. P., who is suffering from a fixed delirium of persecution, show a marked degree of weakness of the intellect, probably due, for most of them, to an arrest of intellectual de-

velopment. This intellectual weakness is a permanent state, it is the manner of life of the individual; it was anterior to the crimes committed; it existed at the time of their trial, just as it exists at present. That is to say, that they are individuals who have not enough intelligence to understand the nature of their acts, nor the consequences thereof, nor to resist the impulses of their weakened inclinations. These persons were evidently incapable of conducting their defence on account of their mental state.

All these individuals were condemned to several years of detention in the penitentiary, and they had been at the time undergoing their punishment for a certain time. We do not know what became of them all, but the sending of one of them, viz., C. L., the second mentioned above, to St. Jean de Dieu Asylum gives us an opportunity of relating his strange story, which one of us presented to the authorities in the following report.

! "I believe it to be my duty to send you a special report on the case of C. L., admitted to the asylum on November 21, 1897, from the Kingston Penitentiary. This patient was admitted to Beauport Asylum on June 20, 1879. After 14 years confinement he escaped from the asylum, August 13, 1893. On the 22nd August, viz., nine days after his escape, he was met near a barn that was on fire, and immediately arrested on suspicion of having set it on fire. The following day, August 23, he was brought before the Police Magistrate at Montreal, and, after the testimony of some witnesses, he was remanded to stand his trial before the Court of Queen's Bench. On September 29 following, he was found guilty of the crime of which he was accused, by a jury in the Court of Queen's Bench, and sentenced to five years imprisonment in the penitentiary. In the month of October, 1896, on the occasion of a casual visit to the penitentiary, I met C. L. I examined him and found that he was an imbecile. I left a report to this effect in the hands of the warden. It was after that visit that C. L. was transferred to the insane department of Kingston penitentiary, but he had already undergone more than three years of his punishment.

It is really astonishing that an imbecile, escaping from a lunatic asylum, where he had been confined for 14 years, who was incapable of reasonable conversation, could, a few days after his escape from the asylum, be brought before the criminal court without exciting any suspicion as to his mental condition. The witnesses, who gave evidence at the trial could not swear to anything, except the fact alone that he had made threats and had been seen near the barn after the discovery of the fire, but they all recalled his incoherent talk and his strange manner of acting, which drew their attention to him. The following account of his previous history was very kindly given me by Dr. Vallee, medical superintendent of the Quebec Asylum."

Dr. Vallee, writing to us, said:—"At the time of C.L.'s commitment to Beauport Asylum, he was classed as a chronic maniac, but he was always very weak-minded, and he was remarkably weak intellectually when he escaped. This is just what astonishes me most, how he could have appeared before a court of justice, without drawing attention to his condition." The medical certificate of commitment, made out in 1879, states that the patient had always shown symptoms of imbecility, but that for the past three years his condition was aggravated by signs of excitement, with threats of violence and murder. In C. L. the skull was remarkably narrow laterally, the face asymmetrical, the ears small and deformed, the countenance without expression. He had, without doubt, the appearance of an imbecile. His conversation was incoherent and restricted to a very limited range of childish ideas; he had but a very imperfect idea of time and place; his memory was very defective, and he had never been able to learn how to read or write.

Case No. 7. D. T....., 35 years of age. Summary. General paralysis; convicted 18 times in the space of four years. Died in prison.

Case No. 8. X..... Summary. An imbecile condemned to three years in the penitentiary. On the expiration of his sentence, transferred to the asylum, because he was not found intelligent enough to take care of himself, seeing that he was a stranger and had no person to look after him. He was certainly in the same condition when he was sentenced, and he should from the first have been sent to the asylum.

Case No. 9. Summary. A. T..... was examined after he had left the penitentiary, where he had served a five years' sentence. He showed a considerable weakness of the intellectual faculties, marked by his incoherent language. After looking into his case it was found that he was insane previous to his conviction, being sentenced when he was evidently insane with delusions. And his faculties became enfeebled (terminal dementia) during his detention.

Case No. 10. Summary. Delusions of wealth and greatness. Condemned to two years in the penitentiary, and one month in prison. Irresponsibility.

J. N. G..... was arrested on March 16, 1896, for refusing to pay his cab fare, and sentenced to one month in prison. Whilst in prison he had such ridiculous ideas of fabulous wealth that the warden asked one of us to examine his mental condition.

J. N. G..... was 78 years of age. After looking into his past record, we found that he had already, the 3rd March, 1892, undergone a term of two years' punishment in the penitentiary for false pretences. He had made a purchase, in payment for which he had given

a cheque on a bank where he had no funds. The explanation he gave of his manner of acting was as follows:—"It is really possible that at the time I had no money in this bank, but they had only to present the cheque at a neighbouring bank. . . . When Vanderbilt gives his cheque it is honoured at all banks, whether he has money there or not." We do not know if this defence is the same as he gave before the court, but of one thing we are certain, he was condemned.

Whilst in the penitentiary he entertained everybody about his fabulous wealth, his gold mines worth millions, about his wonderful inventions, to such a degree that he became a source of disorder. "Had it not been for the short time he was to remain here," the warden wrote us, "it would have been necessary to transfer him to an asylum."

After leaving the penitentiary this same delusion continued until his second arrest. Relying on the testimony of the expert, the authorities had him transferred to an asylum. In April, 1899, he wrote a letter to a friend promising him six million pounds, if he would aid him in escaping.

We have little doubt but that at the time of his first condemnation J. N. G. was a lunatic, and he should have been sent to the asylum instead of being committed to the penitentiary.

Case No. 11. Summary. Epilepsy, ambulatory automatism; 15 times condemned to the common jail. Irresponsibility.

John M. was condemned for being drunk on August 29, 1892, to 15 days in the common jail. This was the first of a series of fifteen commitments for drunkenness, vagrancy or assault, fortunately ending in a convulsive attack a few days after his last commitment to three months in prison, the 4th of November, 1895. This convulsive attack, followed by phenomena out of the ordinary, at length gave a hint, and we were immediately ordered to proceed to a mental examination of the patient.

John M. was 52 years of age, and a cooper by trade. He originally came from Newfoundland, but was a resident of Montreal for the past 26 years. He was a good workman, father of seven children, all well brought up, and until the 29th August, 1892, he had never committed an offence. Though he sometimes used alcoholic liquors, he never abused them; in fact, he was never drunk. He denied any family history of insanity or nervous disease. He showed a slight facial irregularity, the right side being a little more developed than the left.

For five or six years previous the first symptoms of his sickness manifested themselves by loss of consciousness, followed by a crisis of maniacal excitement, afterwards, at intervals of more or less duration, by convulsive crises and loss of consciousness, all or nearly all accompanied or followed by morbid phenomena.

Many times he found himself in the police cell, accused of drunkenness, when he had left home in a state of perfect sobriety. Many times he found himself far from the locality where he had intended to go and in places where he had no reason to be. One morning he woke up in prison; he had been arrested, had undergone his trial, and had been condemned, without being conscious of the fact.

We have, then, in this case, convulsive crisis, loss of memory, ambulatory automatism. And we certainly attribute each of the pretended crimes for which he was sentenced, to a morbid state of mind due to epilepsy.

We must naturally come to the conclusion of irresponsibility in this case, and it is surprising that the court should have refused to accept the sworn testimony that a friend wished to give, viz.: that John M. . . . was an epileptic. John M. has since been transferred to St. Jean de Dieu Asylum.

III.

We see from the above reports and figures that judges, left to their own resources, have been unable to detect insanity in a number of obvious cases, notwithstanding their universally acknowledged perspicacity, carefulness, fairness and learning, to which we wish to render a well-merited tribute.

It is also shown that lunatics have escaped notice in jails and penitentiaries.

From these facts we feel justified to draw the following conclusions:

CONCLUSION.

1. It follows, from what we have just said, that judges are very often unable to appreciate rightly the mental condition of the prisoners brought before them for trial, because they are strangers to the special knowledge of medicine.

2. They should then consider it as one of the duties of their office, to order a medical examination of the mental state of the prisoners, when the circumstances of the crime committed by them, their attitude or their past history point to a defective mental condition.

3. On every occasion, when the defence alleges the irresponsibility of the prisoner, they should order a thorough and independent medical examination, covering all the aspects of the case.

4. They should confide this examination to those who have made a special study of this branch of science.

5. The jail physicians should examine all prisoners immediately after their reception, and report to the magistrate all those who show any doubtful mental condition.

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